

October 6, 2004

Arthur L. Williams
Director
Louisville Metro Air Pollution Control District
850 Barret Avenue
Louisville, Kentucky 40204-1745

RE: Strategic Toxic Air Reduction (STAR) Program

Dear Mr. Williams:

The National Paint & Coatings Association (NPCA) is a voluntary, nonprofit trade association representing some 350 manufacturers of paints, coatings, adhesives, sealants and caulks, raw materials suppliers to the industry, and product distributors. As the preeminent organization representing the coatings industry in the United States, NPCA's primary role is to serve as ally and advocate on legislative, regulatory and judicial issues at the federal, state, and local levels. In addition, NPCA provides members with such services as research and technical information, statistical management information, legal guidance, and community service project support.

As the industry representative for many paint and coating manufacturers in Kentucky as well as raw material suppliers in the State, NPCA is pleased to provide the Louisville Metro Air Pollution Control District (District) with these initial comments on its proposed Strategic Toxic Air Reduction Program (STAR) regulations. We hope that the District will give our preliminary comments serious consideration and work with NPCA as well as other affected stakeholders to produce sound and fair final regulations. To this end, NPCA fully supports those comments submitted by the Kentucky Paint Council, our state counterpart, as well as those submitted by the Greater Louisville Inc.'s Environmental Affairs Committee. Finally, as stated, these are merely initial comments, since NPCA has not had ample time to fully review this complex set of regulations, so we look forward to providing the District with more specific comments during the formal regulatory review period.

Upon preliminary review of the regulations, NPCA is very concerned with the STAR program requirements. The proposed regulations are overly broad, granting unprecedented authority to the District and imposing significant burdens on industry, many of which, in the paint and coatings industry, are small businesses. In addition, it does not appear that the District has addressed the considerable overlap the proposed STAR regulations have on existing regulations and guidelines, both at the state and federal level. Finally, the District proposes not only rigid and costly control requirements, but onerous recordkeeping and reporting requirements as well - all without evidence of commensurate environmental benefit.

The proposed regulations appear to grant an unprecedented level of regulatory authority to the District that NPCA believes is not only unjustified, but impracticable. For

example, in Regulation 1.06, Section 1, it appears the District may require control, monitoring and reporting requirements on any owner or operator of a process or process equipment. Similarly, in Regulation 5.21, Section 3, it appears the District can impose varying degrees of monitoring, recordkeeping and reporting requirements on any stationary source if it determines that the concentration of a toxic air contaminant is, *or may be*, greater than an environmentally acceptable standard (emphasis added). In another example, Regulation 1.20, Section 1 states that the District can impose a malfunction prevention program on a source where a malfunction involving the process or process equipment *may* have occurred (emphasis added). However, the proposed regulations do not specify how the District would make these determinations. Regulations can not be arbitrarily imposed - specific applicability requirements for implementation and compliance assurance must be clearly defined.

Furthermore, the proposed regulations appear to give the District retroactive authority. The reporting requirements under Regulation 1.06 mandates enhanced emission inventory information and analyzes for "Group 1" stationary sources by July 15, 2005 for the 2004 calendar year. Thus, the requirements of the STAR program, just proposed in September of 2004 would retroactively apply to January of 2004. Not only is this retroactive authority unprecedented, it appears to be wholly infeasible. The proposed regulations do not address how a stationary source without information for the first half of 2004 would be able to comply with the regulation. In addition, if the regulation is changed through adequate notice and comment rulemaking procedures, sources will not have actual notice until a final rule at sometime in the future, thereby rendering additional deadlines under the regulation retroactive. Regulations can not be imposed without adequate notice and comment.

The significant burdens placed by these overly broad regulations are particularly damaging to small business interests. A clear understanding of the regulations is all the more important considering the type of facilities these standards may regulate - primarily small businesses. Since the STAR program applies not only to large facilities, but to area sources as well, many of the facilities that will be covered by the program will be small businesses. Approximately 90% of coating manufacturing facilities are small businesses; it is therefore not only critical to the industry as a whole, but to small businesses as well, that interested parties be given the correct rulemaking information on the rulemaking with enough time to adequately respond. These regulations will place stringent and costly air pollution control requirements on these small businesses and the District has not demonstrated that these regulations are warranted or will produce the environmental benefit envisioned by the program.

Furthermore, it does not appear that the District has addressed, or in some cases, even considered the overlap the proposed regulations would have with other state and federal regulations. Specifically, the District has defined terms and imposed requirements that are in direct conflict with Environmental Protection Agency (EPA) and Occupational Health and Safety (OSHA) guidance and regulation. The District's new definition of ambient air, excess emissions, uncontrolled emissions, major source, and start-up, shut-down and malfunction provisions do not comport with EPA's definitions and provisions

in existing National Ambient Air Quality Standards and National Emission Standards for Hazardous Air Pollutants. In addition, some of the provisions in the proposed regulations duplicate existing EPA and OSHA recordkeeping and recording requirements, in direct conflict with paperwork and burden reduction policies.

Lastly, at least one provision contradicts the District's own requirements. In Regulation 1.06, Section 3, the District specifies that EPA method AP42 must be used for the purposes of complying with the regulation's emission estimation requirements. In the same section, the District mandates that emissions data required by the regulation include process or process-equipment specific calculations. EPA's method AP42 is not process specific, but facility based. Furthermore, EPA's own Emissions Improvement Inventory Program (EIIP) guidance disfavors AP42 over specific process-specific emission inventory equations when detailing emission inventories. The EIIP has established numerous industry specific chapters, including Chapter 8 for the Paint and Coatings sector, in order to provide more accurate estimation techniques based on manufacturing processes. The District must address these overlaps, make the requirements consistent with existing and future state and federal regulations and use the most relevant state and federal guidance when imposing these regulations.

The coatings manufacturing industry has changed drastically over the last two decades, with significant improvements over the last five years. The industry is a customer and technology driven industry. NPCA members have consistently led the regulatory curve in reducing both the toxicity and Volatile Organic Compound (VOC) and Hazardous Air Pollutant (HAP) concentrations of our products. These changes have been made in response to market and regulatory forces, which in turn leads to a response in technology. It is clear that the District did not take into account the state and federal rules that currently exist and are statutorily mandated while developing these proposed regulations. In addition to state and local VOC facility and product regulations that have been instituted over the last decade, more recently EPA promulgated maximum achievable control technology (MACT) standards for HAPs, not only for the paint and coatings industry, but for the chemical industry (our raw material suppliers) and for the surface coating industry (our customers). All of the surface coating standards include the much used option of "compliant coatings" in lieu of control technology. Thus, as customers continue to require low and no HAP and VOC products, we continue to work with our suppliers to reformulate to specifications, all the while continuing to reduce emissions through control technology as well.

Under the CAA our industry as well as other stakeholders affected by the proposed STAR program, will next be regulated under federal area source standards as well as residual risk analyses of the MACT standards. The District must take into account existing and future regulations that will impact the goals of the STAR program. Without a coordinated and flexible approach for these rulemakings, it is impossible for industry to determine how best to comply with the regulations from an economic and technical standpoint. Without taking into consideration and addressing the gains and burdens the STAR program will have in relation to the other state and federal air program

requirements, the District imposes rigid and costly requirements, without the commensurate environmental benefit.

Once again, NPCA welcomes the opportunity to comment on this proposed rulemaking, and reserves the right to supplement these comments as further review is undertaken and the formal comment period is opened. In the meantime, please do not hesitate to contact us should you have any questions or need additional information.

Sincerely,

/s/

/s/

Alison Keane, Esq.
Counsel, Government Affairs

David Darling, P.E.
Director, Environmental Affairs